

My day in court

I spent a day in court lately, and it set me thinking about the professions of law and medicine. They lie uneasily together, touching at many points; lawyers and physicians do not have the highest opinions of each other. Yet if a community without medical services would be miserable, a society without laws would be unbearable. Willy-nilly we need each other and must accept each other.

My first appearance in court was, believe it or not, as defending counsel. A soldier has the right to choose an officer to defend him, and a poor devil who had flogged some stores, thinking, I suppose, that I had the gift of the gab, chose me. I realize now that his only hope was to get off on a technicality, but instead I chose flights of oratory, which, before a panel of lawyers, were totally wasted. Thirty days.

I was once faced with a criminal charge myself. The facts were banal, even harmless, though not completely innocent, but when couched in legal terminology sounded ugly, and if proved would have given me a criminal record. In the three weeks of waiting for my case to be heard I went over and over an agonized rehearsal of my version of the facts, and I learned the hard way how every criminal comes to see himself as spotlessly innocent. The charge was withdrawn and I only had to answer my name in court, but the lesson stuck.

I have also faced a charge of negligence and malpractice. I was giving a series of desensitizing injections for hay fever and as he was leaving my patient said "Doctor, I have shown this thing to a lot of physicians, what do you think it is?" There was an indefinite soft swelling an inch in diameter over his occiput. I felt it (there was nothing to be seen) and said I thought it was harmless. Eight months later a neurologist told me he nearly did the same but had the good sense to x-ray the skull: it showed erosion and ultimately a melanoma was diagnosed. I shall never know why it was I who had to carry the can, but it is a fact that I had had a brush with the patient's lawyer over a tenant who had been frightened by a mouse. I endured months of suspense, eased by the serv-

ices of the Medical Protective Association, and that case too was withdrawn, the day before the hearing. I have always kept fairly good clinical notes, but will never forget the moment when I passed my notes of this case at the Examination for Discovery into the hands of the opposing counsel. They were kosher and adequate, but hundreds of times since then I have thought, when making notes, how they would look under similar scrutiny.

My other court appearances have been as an expert witness. How I dread the bailiff in his dark suit pressing the subpoena into my hand. Sometimes one can get out of it by telling the lawyer who issued it of the damning things one is prepared to say. For this is the nub of it, the adversary system. A lawyer is out to win his case, not to reach the truth. A doctor may defend his diagnosis in argument, but as soon as new facts appear which go against it he must be flexible enough to change it. A lawyer cannot do this. He is committed to one side, but the truth is rarely one-sided. It is this that sets our two professions at cross purposes.

Someone said "There are liars, damned liars, and expert witnesses". Many of these are psychiatrists, for our testimony often has a bearing, and as a group we have not been bashful in claiming expertise. I dislike this role and shun it, but of force must issue many letters and reports for which I can be called in court to be examined. I try to follow a simple rule: never say anything which is not completely and obviously justified by the facts. If one goes further one risks being made to look a fool, and by an expert in the art.

For psychiatrists in criminal cases the stumbling block is diminished responsibility. It is a tempting concept and holds a core of truth, but it is hard to seize. The M'Naghten rules, accepted for over 100 years, state that to be criminally responsible the offender must know what he is doing and that it is wrong, but few cases come within its scope without stretching. Then, in the United States, Durham, but that has not been widely endorsed. Under this ruling the criminal act must be the product of mental disease. It is only in capital cases that it

matters, for no prisoner will exchange indefinite commitment to a mental hospital for a definite prison sentence unless his life is at stake. This, apart from humanitarian reasons, has made me oppose capital punishment. So many criminals have some degree of mental illness for which diminished responsibility may be claimed, and while capital punishment exists, so much depends on determining this fine line, whereas without capital punishment we are only debating prison versus mental hospital.

I wish that we psychiatrists could help to solve the terrible problems that face our legal and penal system. Anyone can see that prisons breed crime, and I have thought seriously that what society needs is not punishment, or example, or retribution, or repentance, but the simple removal of the criminal. So why not a criminal colony in the Arctic, where wives and consorts and liquor and gambling might be allowed, but not return to the ordinary community? But then I find my idea associated with Devil's Island, Siberia and Auschwitz, and find it contaminated by the company.

There is a wonderful opportunity for collaboration between the two professions in working to reform the legal and penal system. It is easy to see what is wrong, not easy to formulate revolutionary but practical changes. Crime cannot be eliminated, any more than can sickness; it is a sickness of society that we must try to relieve and mitigate. A healthier and less violent society, better family life, speedier justice, a better probation system, smaller prisons, less brutality and more decency, an after-care system following release from detention, psychiatric care more widely available; it is piecemeal rather than in one hectic stroke that gains will be made.

And my day in court? A schizophrenic wife, divorce, the custody of two children; an opposing psychiatrist and a dozen witnesses evenly divided; office cancelled, we waited all day. At 4:15, too late to start a new case: deferred till the next session in a few months' time.

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